

34:13A-1. Short title

This act shall be known and may be cited as "New Jersey Employer-Employee Relations Act."

L. 1941, c. 100, p. 228, s. 1. Amended by L. 1968, c. 303, s. 2, eff. July 1, 1968.

34:13A-2. Declaration of policy

It is hereby declared as the public policy of this State that the best interests of the people of the State are served by the prevention or prompt settlement of labor disputes, both in the private and public sectors; that strikes, lockouts, work stoppages and other forms of employer and employee strife, regardless where the merits of the controversy lie, are forces productive ultimately of economic and public waste; that the interests and rights of the consumers and the people of the State, while not direct parties thereto, should always be considered, respected and protected; and that the voluntary mediation of such public and private employer-employee disputes under the guidance and supervision of a governmental agency will tend to promote permanent, public and private employer-employee peace and the health, welfare, comfort and safety of the people of the State. To carry out such policy, the necessity for the enactment of the provisions of this act is hereby declared as a matter of legislative determination.

L. 1941, c. 100, p. 228, s. 2. Amended by L. 1968, c. 303, s. 3, eff. July 1, 1968.

34:13A-3. Definitions

When used in this act:

(a) The term "board" shall mean New Jersey State Board of Mediation.

(b) The term "commission" shall mean New Jersey Public Employment Relations Commission.

(c) The term "employer" includes an employer and any person acting, directly or indirectly, on behalf of or in the interest of an employer with the employer's knowledge or ratification, but a labor organization, or any officer or agent thereof, shall be considered an employer only with respect to individuals employed by such organization. This term shall include "public employers" and shall mean the State of New Jersey, or the several counties and municipalities thereof, or any other political subdivision of the State, or a school district, or any special district, or any authority, commission, or board, or any branch or agency of the public service.

(d) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer unless this act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of or in connection with any current labor dispute or because of any unfair labor practice and who has not obtained any other regular and substantially equivalent employment. This term, however, shall not include any individual taking the place of any employee whose work has ceased as aforesaid, nor shall it include any

individual employed by his parent or spouse, or in the domestic service of any person in the home of the employer, or employed by any company owning or operating a railroad or railway express subject to the provisions of the Railway Labor Act. This term shall include any public employee, i.e., any person holding a position, by appointment or contract, or employment in the service of a public employer, except elected officials, members of boards and commissions, managerial executives and confidential employees.

(e) The term "representative" is not limited to individuals but shall include labor organizations, and individual representatives need not themselves be employed by, and the labor organization serving as a representative need not be limited in membership to the employees of, the employer whose employees are represented. This term shall include any organization, agency or person authorized or designated by a public employer, public employee, group of public employees, or public employee association to act on its behalf and represent it or them.

(f) "Managerial executives" of a public employer means persons who formulate management policies and practices, and persons who are charged with the responsibility of directing the effectuation of such management policies and practices, except that in any school district this term shall include only the superintendent or other chief administrator, and the assistant superintendent of the district.

(g) "Confidential employees" of a public employer means employees whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties.

L. 1941, c. 100, p. 228, s. 3. Amended by L. 1941, c. 299, p. 812, s. 1; L. 1968, c. 303, s. 4, eff. July 1, 1968; L. 1974, c. 123, s. 2.

34:13A-4. State Board of Mediation; establishment; membership

There is hereby established in the Department of Labor and Industry a board to be known as the New Jersey State Board of Mediation. The membership of such board shall consist of seven persons to be appointed by the Governor, by and with the advice and consent of the Senate. Of such members, two shall be representative of employees, two shall be representative of employers and three shall be representative of the public. Of the members first appointed, one shall be appointed for a term of 1 year; two for a term of 2 years and two for a term of 3 years. Of the two additional members provided for by this amendment, the original appointees shall hold office for 2 years. Their successors shall be appointed for terms of 3 years. The chairman of the board shall be a member who shall have been designated a representative of the public and who shall be named as chairman by the Governor: the chairman so named shall serve as chairman during his term as a member of the board. A vacancy occurring in the membership of the board for any cause, other than expiration of term, shall be filled by the Governor and the person so appointed shall hold office for the unexpired term of the member whose office has become vacant.

Of the members whose terms have not expired, the Governor shall designate each as a representative of either employees or employers or the public, which designation shall be filed with the Secretary of State, and all appointments hereafter made shall include a designation indicating that such appointee is to be a representative of employees, employers or the public, as the case may be.

For the purpose of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the New Jersey State Board of Mediation is hereby allocated within the Department of Labor and Industry and assigned for administrative purposes to the Assistant Commissioner of Labor for Labor Relations and Work Place Standards, but notwithstanding said allocation and assignment, the board shall be independent of any supervision or control by the department or by any board or officer thereof.

L. 1941, c. 100, p. 229, s. 4. Amended by L. 1945, c. 32, p. 88, s. 1; L. 1973, c. 326, s. 1, eff. Dec. 18, 1973.

34:13A-5. Objective

It shall be the objective of the board hereby established to take such steps as will most effectively and expeditiously carry out the policy declared in section two of this act and the powers and duties conferred and imposed upon the board by this act or by law shall at all times be performed and discharged with the accomplishment of such objective as the ultimate goal.

L. 1941, c. 100, p. 230, s. 5.

34:13A-5.1. Establishment of division of public employment relations and division of private employment dispute settlement

There is hereby established a Division of Public Employment Relations and a Division of Private Employment Dispute Settlement.

(a) The Division of Public Employment Relations shall be concerned exclusively with matters of public employment related to determining negotiating units, elections, certifications and settlement of public employee representative and public employer disputes and grievance procedures. For the purpose of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the Division of Public Employment Relations is hereby allocated within the Department of Labor and Industry, and located in the city of Trenton, but notwithstanding said allocation, the office shall be independent of any supervision or control by the department or by any board or officer thereof.

(b) The Division of Private Employment Dispute Settlement shall assist the New Jersey State Board of Mediation in the resolution of disputes in private employment. The New Jersey State Board of Mediation, its objectives and the powers and duties granted by this act and the act of which this act is amendatory and supplementary shall be concerned exclusively with matters of private employment and the office shall continue to be located in the city of Newark.

L. 1968, c. 303, s. 5. Amended by L. 1973, c. 326, s. 2, eff. Dec. 18, 1973.

34:13A-5.2. Public Employment Relations Commission

There is hereby established in the Division of Public Employment Relations a commission to be known as the New Jersey Public Employment Relations Commission. This commission, in addition to the powers and duties granted by this act, shall have in the public employment area the same powers and duties granted to the labor mediation board in sections 7 and 10 of P.L. 1941, c.100, and in sections 2 and 3 of P.L. 1945, c.32. This commission shall make policy and establish rules and regulations concerning employer-employee relations in public employment relating to dispute settlement, grievance procedures and administration including enforcement of statutory provisions concerning representative elections and related matters and to implement fully all the provisions of this act. The commission shall consist of seven members to be appointed by the Governor, by and with the advice and consent of the Senate. Of such members, two shall be representative of public employers, two shall be representative of public employee organizations and three shall be representative of the public including the appointee who is designated as chairman. Of the first appointees, two shall be appointed for two years, two for a term of three years and three, including the chairman, for a term of four years. Their successors shall be appointed for terms of three years each, and until their successors are appointed and qualified, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whose office has become vacant.

The members of the commission, other than the chairman, shall be compensated at the rate of \$250.00 for each six hour day spent in attendance at meetings and consultations and shall be reimbursed for necessary expenses in connection with the discharge of their duties except that no commission member who receives a salary or other form of compensation as a representative of any employer or employee group, organization or association, shall be compensated by the commission for any deliberations directly involving members of said employer or employee group, organization or association. Compensation for more, or less than, six hours per day, shall be prorated in proportion to the time involved.

The chairman of the commission shall be its chief executive officer and administrator, shall devote his full time to the performance of his duties as chairman of the Public Employment Relations Commission and shall receive such compensation as shall be provided by law.

L. 1968, c. 303, s. 6 eff. July 1, 1968. Amended by L. 1974, c. 123, s. 3; L. 1987, c. 456, s. 1, eff. Jan. 19, 1988.

34:13A-5.3. Employee organizations; right to form or join; collective negotiations; grievance procedures

Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity; provided, however, that this right shall not extend to elected officials, members of boards and commissions, managerial executives,

or confidential employees, except in a school district the term managerial executive shall mean the superintendent of schools or his equivalent, nor, except where established practice, prior agreement or special circumstances dictate the contrary, shall any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits nonsupervisory personnel to membership, and the fact that any organization has such supervisory employees as members shall not deny the right of that organization to represent the appropriate unit in collective negotiations; and provided further, that, except where established practice, prior agreement, or special circumstances dictate the contrary, no policeman shall have the right to join an employee organization that admits employees other than policemen to membership. The negotiating unit shall be defined with due regard for the community of interest among the employees concerned, but the commission shall not intervene in matters of recognition and unit definition except in the event of a dispute.

Representatives designated or selected by public employees for the purposes of collective negotiation by the majority of the employees in a unit appropriate for such purposes or by the majority of the employees voting in an election conducted by the commission as authorized by this act shall be the exclusive representatives for collective negotiation concerning the terms and conditions of employment of the employees in such unit. Nothing herein shall be construed to prevent any official from meeting with an employee organization for the purpose of hearing the views and requests of its members in such unit so long as (a) the majority representative is informed of the meeting; (b) any changes or modifications in terms and conditions of employment are made only through negotiation with the majority representative; and (c) a minority organization shall not present or process grievances. Nothing herein shall be construed to deny to any individual employee his rights under Civil Service laws or regulations. When no majority representative has been selected as the bargaining agent for the unit of which an individual employee is a part, he may present his own grievance either personally or through an appropriate representative or an organization of which he is a member and have such grievance adjusted.

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization membership. Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established. In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes, and other terms and conditions of employment. Nothing herein shall be construed as permitting negotiation of the standards or criteria for employee performance.

When an agreement is reached on the terms and conditions of employment, it shall be embodied in writing and signed by the authorized representatives of the public employer and the majority representative.

Public employers shall negotiate written policies setting forth grievance and disciplinary review procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions, including disciplinary determinations, affecting them, provided that such grievance and disciplinary review procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance and disciplinary review procedures may provide for binding arbitration as a means for resolving disputes. Except as otherwise provided herein, the procedures agreed to by the parties may not replace or be inconsistent with any alternate statutory appeal procedure nor may they provide for binding arbitration of disputes involving the discipline of employees with statutory protection under tenure or civil service laws, except that such procedures may provide for binding arbitration of disputes involving the minor discipline of any public employees protected under the provisions of section 7 of P.L.1968, c.303 (C.34:13A-5.3), other than public employees subject to discipline pursuant to R.S.53:1-10. Grievance and disciplinary review procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement. For the purposes of this section, minor discipline shall mean a suspension or fine of less than five days unless the employee has been suspended or fined an aggregate of 15 or more days or received more than three suspensions or fines of five days or less in one calendar year.

Where the State of New Jersey and the majority representative have agreed to a disciplinary review procedure that provides for binding arbitration of disputes involving the major discipline of any public employee protected under the provisions of this section, other than public employees subject to discipline pursuant to R.S.53:1-10, the grievance and disciplinary review procedures established by agreement between the State of New Jersey and the majority representative shall be utilized for any dispute covered by the terms of such agreement. For the purposes this section, major discipline shall mean a removal, disciplinary demotion, suspension or fine of more than five days, or less where the aggregate number of days suspended or fined in any one calendar year is 15 or more days or unless the employee received more than three suspensions or fines of five days or less in one calendar year.

L. 1968, c. 303, s. 7, eff. July 1, 1968. Amended by 1974, c. 123, s. 4; L. 1982, c. 103, s. 1, eff. July 30, 1982; L. 1996, c. 115, s. 4, eff. Jan. 9, 1997; L. 2003, c. 119, s. 2, eff. July 1, 2003.

34:13A-5.4. Unfair practices; proceedings for enforcement; determination of questions within scope of collective negotiations; appeal; rules for representation elections and negotiations; order of enforcement

a. Public employers, their representatives or agents are prohibited from:

(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act.

(2) Dominating or interfering with the formation, existence or administration of any employee organization.

(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act.

(4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act.

(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative.

(6) Refusing to reduce a negotiated agreement to writing and to sign such agreement.

(7) Violating any of the rules and regulations established by the commission.

b. Employee organizations, their representatives or agents are prohibited from:

(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act.

(2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances.

(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit.

(4) Refusing to reduce a negotiated agreement to writing and to sign such agreement.

(5) Violating any of the rules and regulations established by the commission.

c. The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice listed in subsections a. and b. above. Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof; provided that no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the 6-month period shall be computed from the day he was no longer so prevented.

In any such proceeding, the provisions of the Administrative Procedure Act P.L.1968, c. 410 (C. 52:14B-1 et seq.) shall be applicable. Evidence shall be taken at the hearing and filed with the commission. If, upon all the evidence taken, the commission shall determine that any party

charged has engaged or is engaging in any such unfair practice, the commission shall state its findings of fact and conclusions of law and issue and cause to be served on such party an order requiring such party to cease and desist from such unfair practice, and to take such reasonable affirmative action as will effectuate the policies of this act. All cases in which a complaint and notice of hearing on a charge is actually issued by the commission, shall be prosecuted before the commission or its agent, or both, by the representative of the employee organization or party filing the charge or his authorized representative.

d. The commission shall at all times have the power and duty, upon the request of any public employer or majority representative, to make a determination as to whether a matter in dispute is within the scope of collective negotiations. The commission shall serve the parties with its findings of fact and conclusions of law. Any determination made by the commission pursuant to this subsection may be appealed to the Appellate Division of the Superior Court.

e. The commission shall adopt such rules as may be required to regulate the conduct of representation elections, and to regulate the time of commencement of negotiations and of institution of impasse procedures so that there will be full opportunity for negotiations and the resolution of impasses prior to required budget submission dates.

f. The commission shall have the power to apply to the Appellate Division of the Superior Court for an appropriate order enforcing any order of the commission issued under subsection c. or d. hereof, and its findings of fact, if based upon substantial evidence on the record as a whole, shall not, in such action, be set aside or modified; any order for remedial or affirmative action, if reasonably designed to effectuate the purposes of this act, shall be affirmed and enforced in such proceeding.

L. 1974, c. 123, s. 1. Amended by L. 1979, c. 477, s. 1, eff. July 1, 1980.

34:13A-5.5. Representation fee in lieu of dues

a. Notwithstanding any other provisions of law to the contrary, the majority representative and the public employer of public employees in an appropriate unit shall, where requested by the majority representative, negotiate concerning the subject of requiring the payment by all nonmember employees in the unit to the majority representative of a representation fee in lieu of dues for services rendered by the majority representative. Where agreement is reached it shall be embodied in writing and signed by the authorized representatives of the public employer and the majority representative. If no agreement is reached, the majority representative may petition the commission to conduct an investigation. If the commission determines during the investigation that a majority of the employees in the negotiations unit are voluntary dues paying members of the majority representative and that the majority representative maintains a demand and return system as required by subsection c. of this section and section 3 of P.L.1979, c.477 (C.34:13A-5.6), the commission shall order the public employer to institute a payroll deduction of the representation fee in lieu of dues from the wages or salaries of the employees in the negotiations unit who are not members of the majority representative.

b. The representation fee in lieu of dues shall be in an amount equivalent to the regular membership dues, initiation fees and assessments charged by the majority representative to its own members less the cost of benefits financed through the dues, fees and assessments and available to or benefitting only its members, but in no event shall such fee exceed 85% of the regular membership dues, fees and assessments.

c. Any public employee who pays a representation fee in lieu of dues shall have the right to demand and receive from the majority representative, under proceedings established and maintained in accordance with section 3 of P.L.1979, c.477 (C.34:13A-5.6), a return of any part of that fee paid by him which represents the employee's additional pro rata share of expenditures by the majority representative that is either in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment or applied toward the cost of any other benefits available only to members of the majority representative. The pro rata share subject to refund shall not reflect, however, the costs of support of lobbying activities designed to foster policy goals in collective negotiations and contract administration or to secure for the employees represented advantages in wages, hours, and other conditions of employment in addition to those secured through collective negotiations with the public employer.

L. 1979, c. 477, s. 2. Amended by L. 2002, c. 46, s. 1.

34:13A-5.6. Representation fee in lieu of dues by payroll deduction

Where a negotiated agreement is reached, pursuant to section 2 of P.L.1979, c.477 (C.34:13A-5.5), or where the public employer has been ordered by the commission to institute a payroll deduction of the representation fee in lieu of dues, a majority representative of public employees in an appropriate unit shall be entitled to a representation fee in lieu of dues by payroll deduction from the wages or salaries of the employees in such unit who are not members of a majority representative; provided, however, that membership in the majority representative is available to all employees in the unit on an equal basis and that the representation fee in lieu of dues shall be available only to a majority representative that has established and maintained a demand and return system which provides pro rata returns as described in subsection c. of section 2 of P.L.1979, c.477 (C.34:13A-5.5). The demand and return system shall include a provision by which persons who pay a representation fee in lieu of dues may obtain review of the amount returned through full and fair proceedings placing the burden of proof on the majority representative. Such proceedings shall provide for an appeal to a board consisting of three members to be appointed by the Governor, by and with the advice and consent of the Senate, who shall serve without compensation but shall be reimbursed for actual expenses reasonably incurred in the performance of their official duties. Of such members, one shall be representative of public employers, one shall be representative of public employee organizations and one, as chairman, who shall represent the interest of the public as a strictly impartial member not having had more than a casual association or relationship with any public employers, public employer organizations or public employee organizations in the 10 years prior to appointment. Of the first appointees, one shall be appointed for one year, one for a term of two years and the chairman, for a term of three years. Their successors shall be appointed for terms of two years each and until

their successors are appointed and qualified, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whose office has become vacant. Nothing herein shall be deemed to require any employee to become a member of the majority representative.

L. 1979, c. 477, s. 3. Amended by L. 2002, c. 46, s. 2.

34:13A-5.7. Discrimination between nonmembers and members on basis of payment of fee; unfair practice

Any action engaged in by a public employer, its representatives or agents, or by an employee organization, its representatives or agents, which discriminates between nonmembers who pay the said representation fee and members with regard to the payment of such fee other than as allowed under this act, shall be treated as an unfair practice within the meaning of subsection 1(a) or subsection 1(b) of this act.

L. 1979, c. 477, s. 4, eff. July 1, 1980.

34:13A-5.8. Payment to majority representative

Payment of the representation fee in lieu of dues shall be made to the majority representative during the term of the collective negotiation agreement affecting such nonmember employees and during the period, if any, between successive agreements so providing, on or after, but in no case sooner than the thirtieth day following the beginning of an employee's employment in a position included in the appropriate negotiations unit, and the tenth day following reentry into the appropriate unit for employees who previously served in a position included in the appropriate unit who continued in the employ of the public employer in an excluded position and individuals being reemployed in such unit from a reemployment list. For the purposes of this section, individuals employed on a 10-month basis or who are reappointed from year to year shall be considered to be in continuous employment.

L. 1979, c. 477, s. 5, eff. July 1, 1980.

34:13A-5.9. Rules and regulations

The commission may promulgate rules or regulations to effectuate the purposes of this act.

L. 1979, c. 477, s. 6, eff. July 1, 1980.

34:13A-6. Powers and duties

(a) Upon its own motion, in an existing, imminent or threatened labor dispute in private employment, the board, through the Division of Private Employment Dispute Settlement, may, and, upon the request of the parties or either party to the dispute, must take such steps as it may deem expedient to effect a voluntary, amicable and expeditious adjustment and settlement of the

differences and issues between employer and employees which have precipitated or culminated in or threaten to precipitate or culminate in such labor dispute.

(b) Whenever negotiations between a public employer and an exclusive representative concerning the terms and conditions of employment shall reach an impasse, the commission, through the Division of Public Employment Relations shall, upon the request of either party, take such steps as it may deem expedient to effect a voluntary resolution of the impasse. In the event of a failure to resolve the impasse by mediation the Division of Public Employment Relations is empowered to recommend or invoke factfinding with recommendation for settlement, the cost of which shall be borne by the commission.

(c) The board in private employment, through the Division of Private Employment Dispute Settlement, and the commission in public employment, through the Division of Public Employment Relations, shall take the following steps to avoid or terminate labor disputes: (1) to arrange for, hold, adjourn or reconvene a conference or conferences between the disputants or one or more of their representatives or any of them; (2) to invite the disputants or their representatives or any of them to attend such conference and submit, either orally or in writing, the grievances of and differences between the disputants; (3) to discuss such grievances and differences with the disputants and their representatives; and (4) to assist in negotiating and drafting agreements for the adjustment in settlement of such grievances and differences and for the termination or avoidance, as the case may be, of the existing or threatened labor dispute.

(d) The commission, through the Division of Public Employment Relations, is hereby empowered to resolve questions concerning representation of public employees by conducting a secret ballot election or utilizing any other appropriate and suitable method designed to ascertain the free choice of the employees. The division shall decide in each instance which unit of employees is appropriate for collective negotiation, provided that, except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and nonsupervisors, (2) both professional and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit or, (3) both craft and noncraft employees unless a majority of such craft employees vote for inclusion in such unit. All of the powers and duties conferred or imposed upon the division that are necessary for the administration of this subdivision, and not inconsistent with it, are to that extent hereby made applicable. Should formal hearings be required, in the opinion of said division to determine the appropriate unit, it shall have the power to issue subpoenas as described below, and shall determine the rules and regulations for the conduct of such hearing or hearings.

(e) For the purposes of this section the Division of Public Employment Relations shall have the authority and power to hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony or deposition of any person under oath, and in connection therewith, to issue subpoenas duces tecum, and to require the production and examination of any governmental or other books or papers relating to any matter described above.

(f) In carrying out any of its work under this act, the board may designate one of its members, or an officer of the board to act in its behalf and may delegate to such designee one or more of its duties hereunder and, for such purpose, such designee shall have all the powers hereby conferred upon the board in connection with the discharge of the duty or duties so delegated. In carrying out any of its work under this act, the commission may designate one of its members or an officer of the commission to act on its behalf and may delegate to such designee one or more of its duties hereunder and, for such purpose, such designee shall have all of the powers hereby conferred upon the commission in connection with the discharge of the duty or duties so delegated.

(g) The board and commission may also appoint and designate other persons or groups of persons to act for and on its behalf and may delegate to such persons or groups of persons any and all of the powers conferred upon it by this act so far as it is reasonably necessary to effectuate the purposes of this act. Such persons shall serve without compensation but shall be reimbursed for any necessary expenses.

(h) The personnel of the Division of Public Employment Relations shall include only individuals familiar with the field of public employee-management relations. The commission's determination that a person is familiar in this field shall not be review able by any other body.

L. 1941, c. 100, p. 230, s. 6. Amended by L. 1968, c. 303, s. 8, eff. July 1, 1968; L. 1974, c. 123, s. 5.

34:13A-6.1. Priority of reorganization plan of department of labor and industry

To the extent that the reorganization plan of the Department of Labor and Industry which was submitted to the Legislature on May 11, 1972 (effective July 10, 1972) is inconsistent with, changes or alters the powers of either the New Jersey Public Employment Relations Commission in the Division of Public Employment Relations or the Board of Mediation in the Division of Private Employment Dispute Settlement as they existed prior to the effective date of said reorganization, such reorganization plan shall be to such extent superseded and inoperative.

L. 1973, c. 326, s. 3, eff. Dec. 18, 1973.

34:13A-7. Arbitration

Whenever a controversy shall arise between an employer and his employees which is not settled either in conference between representatives of the parties or through mediation in the manner provided by this act, such controversy may, by agreement of the parties, be submitted to arbitration, one person to be selected by the employer, one person to be selected by the employees, and a third selected by the representatives of the employer and employees, and in the event of any such appointment or selection not being made upon the request of the parties in the controversy, the department may select the third person to arbitrate the matter submitted; provided, however, that the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of the policy or purpose of this act, or of any provision

thereof, nor shall failure or refusal to arbitrate constitute a basis for any action at law or suit in equity.

L. 1941, c. 100, p. 231, s. 7.

34:13A-8. Strikes

Nothing in this act shall be construed to interfere with, impede or diminish in any way the right of private employees to strike or engage in other lawful concerted activities.

L. 1941, c. 100, p. 231, s. 8. Amended by L. 1968, c. 303, s. 9, eff. July 1, 1968.

34:13A-8.1. Effect of act upon prior agreements or upon pension statutes

Nothing in this act shall be construed to annul or modify, or to preclude the continuation of any agreement during its current term heretofore entered into between any public employer and any employee organization nor shall any provision hereof annul or modify any pension statute or statutes of this State.

L. 1968, c. 303, s. 10, eff. July 1, 1968. Amended by L. 1974, c. 123, s. 6.

34:13A-8.2. Filed contracts in public employment

The commission shall collect and maintain a current file of filed contracts in public employment. Public employers shall file with the commission a copy of any contracts it has negotiated with public employee representatives following the consummation of negotiations.

L. 1968, c. 303, s. 11, eff. July 1, 1968.

34:13A-8.3. Development and maintenance of programs

The commission in conjunction with the Institute of Management and Labor of Rutgers, The State University, shall develop and maintain a program for the guidance of public employees and public employers in employee-management relations, to provide technical advice to public employees and public employers on employee-management programs, to assist in the development of programs for training employee and management personnel in the principles and procedures of consultation, negotiation and the settlement of disputes in the public service, and for the training of employee and management officials in the discharge of their employee-management relations responsibilities in the public interest.

L. 1968, c. 303, s. 12, eff. July 1, 1968. Amended by L. 1974, c. 123, s. 7.

34:13A-9. Personnel; compensation

(1) For the performance of its work, under this act, the board may request and shall avail itself of and utilize the service of any officer or employee of the Department of Labor and Industry who shall render such assistance as the board may require without additional compensation. The board may, within the amount available therefor by appropriation, appoint a secretary and such other assistants and employees as it may require for the consummation of its work, prescribe their duties and fix their compensation. (2) Each member of the board shall be entitled to be reimbursed for his traveling and other expenses actually and necessarily incurred by him in the performance of his duties, and, in addition, shall receive a per diem allowance of \$50.00 for each day, or part thereof, spent in the rendition of service to or for the board under this act; provided, however, that no member shall in any case receive per diem compensation as such member in an amount in excess of \$5,000.00 for any 1 fiscal year.

L. 1941, c. 100, p. 231, s. 9. Amended by L. 1945, c. 32, p. 89, s. 2; L. 1967, c. 110, s. 1, eff. June 15, 1967.

34:13A-10. Disqualifications

No member or officer of the board having any financial or other interest in a trade, business, industry or occupation in which a labor dispute exists or is threatened and of which the board has taken cognizance, shall be qualified to participate in any way in the acts or efforts of the board in connection with the settlement or avoidance thereof.

L. 1941, c. 100, p. 232, s. 10.

34:13A-10.1. Board members; participation; membership or employment in other agencies

No member of the board shall take any part, directly or indirectly, in any proceeding involving any relation between employees and employers before any board, bureau, commission, officer or court, unless such member in such proceeding takes the part of the same group whether employees, employers, or the public, as he represents on the Board of Mediation.

No member of the board shall be a member or employee of any other public board, body, commission, bureau or agency which deals with employer and employee relations, whether Federal, State or local, except that he may be a member of any such board, body, commission, bureau or agency if his membership thereon is as a representative of the same group, whether employees, employers or the public, as it is on the Board of Mediation.

L. 1945, c. 32, p. 90, s. 3.

34:13A-11. Rules

The board shall have power to adopt, alter, amend or repeal such rules in connection with the voluntary mediation of labor disputes in private employment and the commission shall have the same powers in public employment, as may be necessary for the proper administration and enforcement of the provisions of this act.

L. 1941, c. 100, p. 232, s. 11. Amended by L. 1968, c. 303, s. 13, eff. July 1, 1968.

34:13A-12. Construction

Nothing contained in this act shall be construed as interfering with, impeding or diminishing in any way any right guaranteed by law or by the Constitution of the State or of the United States.

L. 1941, c. 100, p. 232, s. 12.

34:13A-13. Separability of provisions

If any clause, sentence, paragraph or part of this act, or the application thereof to any person or circumstances, shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this act, and the application of such provisions to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved. It is hereby declared to be the legislative intent that this act would have been adopted had such invalid provisions not been included herein.

L. 1941, c. 100, p. 232, s. 13.

34:13A-14. Findings, declaration relative to compulsory arbitration procedure

The Legislature finds and declares:

a. Recognizing the unique and essential duties which law enforcement officers and firefighters perform for the benefit and protection of the people of this State, cognizant of the life threatening dangers these public servants regularly confront in the daily pursuit of their public mission, and fully conscious of the fact that these public employees, by legal and moral precept, do not enjoy the right to strike, it is the public policy of this State that it is requisite to the high morale of such employees, the efficient operation of such departments, and to the general well-being and benefit of the citizens of this State to afford an alternate, expeditious, effective and binding procedure for the resolution of disputes; and

b. It also is the public policy of this State to ensure that the procedure so established fairly and adequately recognizes and gives all due consideration to the interests and welfare of the taxpaying public; and

c. Further, it is the public policy of this State to prescribe the scope of the authority delegated for the purposes of this reform act; to provide that the authority so delegated be statutorily limited, reasonable, and infused with stringent safeguards, while at the same time affording arbitrators the decision making authority necessary to protect the public good; and to mandate that in exercising the authority delegated under this reform act, arbitrators fully recognize and consider the public interest and the impact that their decisions have on the public welfare, and

fairly and reasonably perform their statutory responsibilities to the end that labor peace between the public employer and its employees will be stabilized and promoted, and that the general public interest and welfare shall be preserved; and, therefore,

d. To that end the provisions of this reform act, providing for compulsory arbitration, shall be liberally construed.

L. 1977, c. 85, s. 1, eff. May 10, 1977. Amended by L. 1995, c. 425, s. 2, eff. Jan. 10, 1996.

34:13A-14a. Short title

This act shall be known and may be cited as the "Police and Fire Public Interest Arbitration Reform Act."

L. 1995, c. 425, s. 1.

34:13A-15. Definitions

"Public fire department" means any department of a municipality, county, fire district or the State or any agency thereof having employees engaged in firefighting provided that such firefighting employees are included in a negotiating unit exclusively comprised of firefighting employees.

"Public police department" means any police department or organization of a municipality, county or park, or the State, or any agency thereof having employees engaged in performing police services including but not necessarily limited to units composed of State troopers, police officers, detectives and investigators of counties, county parks and park commissions, grades of sheriff's officers and investigators; State motor vehicle officers, inspectors and investigators of the Alcoholic Beverage Commission, conservation officers in Fish, Game and Shell Fisheries, rangers in parks, marine patrolmen; correction officers, keepers, cottage officers, interstate escort officers, juvenile officers in the Department of Corrections and patrolmen of the Human Services and Corrections Departments; patrolmen of Capitol police and patrolmen of the Palisades Interstate Park Commission.

L. 1977, c. 85, s. 2, eff. May 10, 1977.

34:13A-16. Negotiations between public fire, police department and exclusive representative; binding arbitration

a. (1) Negotiations between a public fire or police department and an exclusive representative concerning the terms and conditions of employment shall begin at least 120 days prior to the day on which their collective negotiation agreement is to expire. The parties shall meet at least three times during that 120-day period. The first of those three meetings shall take place no later than the 90th day prior to the day on which their collective negotiation agreement is to expire. By mutual consent, the parties may agree to extend the period during which the second and third meetings are required to take place beyond the day on which their collective

negotiation agreement is to expire. A violation of this paragraph shall constitute an unfair practice and the violator shall be subject to the penalties prescribed by the commission pursuant to rule and regulation.

(2) Whenever those negotiations concerning the terms and conditions of employment shall reach an impasse, the commission, through the Division of Public Employment Relations shall, upon the request of either party, or upon its own motion take such steps, including the assignment of a mediator, as it may deem expedient to effect a voluntary resolution of the impasse.

b. (1) In the event of a failure to resolve the impasse by mediation, the Division of Public Employment Relations, at the request of either party, shall invoke fact-finding with recommendation for settlement of all issues in dispute unless the parties reach a voluntary settlement prior to the issuance of the fact finder's report and recommended terms of settlement. Factfindings shall be limited to those issues that are within the required scope of negotiations unless the parties to the fact-finding agree to fact-finding on permissive subjects of negotiation. In the event of a continuing failure to resolve an impasse by means of the procedure set forth in this paragraph, and notwithstanding the fact that such procedures have not been exhausted, the parties shall notify the commission, at a time and in a manner prescribed by the commission, as to whether or not they have agreed upon a terminal procedure for resolving the issues in dispute. Any terminal procedure mutually agreed upon by the parties shall be reduced to writing, provide for finality in resolving the issues in dispute, and shall be submitted to the commission for approval.

(2) Notwithstanding the provisions of paragraph (2) of subsection a. of this section or paragraph (1) of this subsection, either party may petition the commission for arbitration on or after the date on which their collective negotiation agreement expires. The petition shall be filed in a manner and form prescribed by the commission. The party filing the petition shall notify the other party of its action. The notice shall be given in a manner and form prescribed by the commission.

Within 10 days of the receipt of the notice by the non-petitioning party, the parties shall notify the commission as to whether or not they have agreed upon a terminal procedure for resolving the issues in dispute. Any terminal procedure mutually agreed upon by the parties shall be reduced to writing, provide for finality in resolving the issues in dispute, and shall be submitted to the commission for approval. If the parties fail to agree on a terminal procedure, they shall be subject to the provisions of subsection d. of this section.

c. Terminal procedures that are approvable include, but shall not be limited to the following:

(1) Conventional arbitration of all unsettled items.

(2) Arbitration under which the award by an arbitrator or panel of arbitrators is confined to a choice between (a) the last offer of the employer and (b) the last offer of the employees' representative, as a single package.

(3) Arbitration under which the award is confined to a choice between (a) the last offer of the employer and (b) the last offer of the employees' representative, on each issue in dispute, with the decision on an issue-by-issue basis.

(4) If there is a factfinder's report with recommendations on the issues in dispute, the parties may agree to arbitration under which the award would be confined to a choice among three positions: (a) the last offer of the employer as a single package, (b) the last offer of the employees' representative as a single package, or (c) the factfinder's recommendations as a single package.

(5) If there is a factfinder's report with a recommendation on each of the issues in dispute, the parties may agree to arbitration under which the award would be confined to a choice on each issue from among three positions: (a) the last offer of the employer on the issue, (b) the employee representative's last offer on the issue, or (c) the factfinder's recommendation on the issue.

(6) Arbitration under which the award on the economic issues in dispute is confined to a choice between (a) the last offer of the employer on the economic issues as a single package and (b) the employee representative's last offer on the economic issues as a single package; and, on any noneconomic issues in dispute, the award is confined to a choice between (a) the last offer of the employer on each issue in dispute and (b) the employee representative's last offer on that issue.

d. The following procedure shall be utilized if parties fail to agree on a terminal procedure for the settlement of an impasse dispute:

(1) In the event of a failure of the parties to agree upon an acceptable terminal procedure the parties shall separately so notify the commission in writing, indicating all issues in dispute and the reasons for their inability to agree on the procedure. The substance of a written notification shall not provide the basis for any delay in effectuating the provisions of this subsection.

(2) Upon receipt of such notification from either party or on the commission's own motion, the procedure to provide finality for the resolution of issues in dispute shall be binding arbitration under which the award on the unsettled issues is determined by conventional arbitration. The arbitrator shall separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria set forth in subsection g. of this section.

e. (1) The commission shall take measures to assure the impartial selection of an arbitrator or arbitrators from its special panel of arbitrators. Unless the parties, in a time and manner prescribed by the commission, mutually agree upon the selection of an arbitrator from the commission's special panel of arbitrators and so notify the commission in writing of that selection, the assignment of any arbitrator for the purposes of this act shall be the responsibility

of the commission, independent of and without any participation by either of the parties. The commission shall select the arbitrator for assignment by lot.

In any proceeding where an arbitrator selected by mutual agreement is unable to serve, the two parties shall be afforded an opportunity to select a replacement. If the two parties are unable to mutually agree upon the selection of a replacement within a time period prescribed by the commission, the commission shall select the replacement in the manner hereinafter provided.

In any proceeding where an assigned arbitrator is unable to serve or, pursuant to the preceding paragraph, the two parties are unable to mutually agree upon a replacement, the commission shall assign a replacement arbitrator. The assignment shall be the responsibility of the commission, independent of and without any participation by either of the parties. The commission shall select the replacement arbitrator for assignment by lot.

(2) Appointment to the commission's special panel of arbitrators shall be for a three-year term, with reappointment contingent upon a screening process similar to that used for determining initial appointments.

The commission may suspend, remove, or otherwise discipline an arbitrator for a violation of P.L.1977, c.85 (C.34:13A-14 et seq.), section 4 of P.L.1995, c.425 (C.34:13A-16.1) or for good cause.

f. (1) At a time prescribed by the commission, the parties shall submit to the arbitrator or tripartite panel of arbitrators their final offers on each economic and non-economic issue in dispute. The offers submitted pursuant to this section shall be used by the arbitrator for the purposes of determining an award pursuant to paragraph (2) of subsection d. of this section. The commission shall promulgate rules and procedures governing the submission of the offers required under this paragraph, including when those offers shall be deemed final, binding and irreversible.

(2) In the event of a dispute, the commission shall have the power to decide which issues are economic issues. Economic issues include those items which have a direct relation to employee income including wages, salaries, hours in relation to earnings, and other forms of compensation such as paid vacation, paid holidays, health and medical insurance, and other economic benefits to employees.

(3) Throughout formal arbitration proceedings the chosen arbitrator or panel of arbitrators may mediate or assist the parties in reaching a mutually agreeable settlement.

(4) Arbitration shall be limited to those subjects that are within the required scope of collective negotiations, except that the parties may agree to submit to arbitration one or more permissive subjects of negotiation.

(5) The decision of an arbitrator or panel of arbitrators shall include an opinion and an award, and shall be rendered within 120 days of the selection of the arbitrator by the mutual

agreement of both parties or the commission's assignment of that arbitrator or panel of arbitrators, as the case may be, pursuant to paragraph (1) of subsection e. of this section; provided, however, the arbitrator or panel of arbitrators, for good cause, may petition the commission for an extension of not more than 60 days. The two parties, by mutual consent, may agree to an extension. The parties shall notify the arbitrator and the commission of any such agreement in writing. The notice shall set forth the specific date on which the extension shall expire. Any arbitrator or panel of arbitrators violating the provisions of this paragraph may be subject to the commission's powers under paragraph (2) of subsection e. of this section. The decision shall be final and binding upon the parties and shall be irreversible, except:

(a) Within 14 days of receiving an award, an aggrieved party may file notice of an appeal of an award to the commission on the grounds that the arbitrator failed to apply the criteria specified in subsection g. of this section or violated the standards set forth in N.J.S.2A:24-8 or N.J.S.2A:24-9. The appeal shall be filed in a form and manner prescribed by the commission. In deciding an appeal, the commission, pursuant to rule and regulation and upon petition, may afford the parties the opportunity to present oral arguments. The commission may affirm, modify, correct or vacate the award or may, at its discretion, remand the award to the same arbitrator or to another arbitrator, selected by lot, for reconsideration. An aggrieved party may appeal a decision of the commission to the Appellate Division of the Superior Court.

(b) An award that is not appealed to the commission shall be implemented immediately. An award that is appealed and not set aside by the commission shall be implemented within 14 days of the receipt of the commission's decision absent a stay.

(6) The parties shall bear the costs of arbitration subject to a fee schedule approved by the commission.

g. The arbitrator or panel of arbitrators shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor:

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L.1976, c.68 (C.40A:4-45.1 et seq.).

(2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

(a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L.1995, c.425 (C.34:13A-16.2); provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L.1976, c.68 (C.40A:4-45.1 et seq.).

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

h. A mediator, factfinder, or arbitrator while functioning in a mediatory capacity shall not be required to disclose any files, records, reports, documents, or other papers classified as confidential received or prepared by him or to testify with regard to mediation, conducted by him under this act on behalf of any party to any cause pending in any type of proceeding under this act. Nothing contained herein shall exempt such an individual from disclosing information relating to the commission of a crime.

L. 1977, c. 85, s. 1. Amended L. 1995, c. 425, s. 3; L. 1997, c. 183.

34:13A-16.1. Annual continuing education program for arbitrators

The commission shall establish an annual continuing education program for the arbitrators appointed to its special panel of arbitrators. The program shall include sessions or seminars on topics and issues of relevance and importance to arbitrators serving on the commission's special panel of arbitrators, such as public employer budgeting and finance, public management and administration, employment trends and labor costs in the public sector, pertinent court decisions, employment issues relating to law enforcement officers and firefighters, and such other topics as the commission shall deem appropriate and necessary. In preparing the curriculum for the annual education program required under this section, the commission shall solicit suggestions from employees' representatives and public employers concerning the topics and issues each of those parties deem relevant and important.

Every arbitrator shall be required to participate in the commission's continuing education program. If a mediator or an arbitrator in any year fails to participate, the commission may remove that person from its special panel of arbitrators. If an arbitrator fails to participate in the continuing education program for two consecutive years, the commission shall immediately remove that individual from the special panel.

L. 1995, c. 425, s. 4., eff. Jan. 10, 1996.

34:13A-16.2. Guidelines for determining comparability of jurisdictions

a. The commission shall promulgate guidelines for determining the comparability of jurisdictions for the purposes of paragraph (2) of subsection g. of section 3 of P.L. 1977, c. 85 (C.34:13A-16).

b. The commission shall review the guidelines promulgated under this section at least once every four years and may modify or amend them as is deemed necessary; provided, however, that the commission shall review and modify those guidelines in each year in which a federal decennial census becomes effective pursuant to R.S.52:4-1.

L. 1995, c. 425, s. 5, eff. Jan. 10, 1996.

34:13A-16.3. Fee schedule; commission costs

The commission may establish a fee schedule to cover the costs of effectuating the provisions of P.L.1977, c.85 (C.34:13A-14 et seq.), as amended and supplemented; provided, however, that the fees so assessed shall not exceed the commission's actual cost of effectuating those provisions.

L. 1995, c. 425, s. 6, eff. Jan. 10, 1996.

34:13A-16.4. Biennial reports

The commission shall submit biennial reports to the Governor and the Legislature on the effects of this amendatory and supplementary act on the negotiations and settlements between local governmental units and their public police departments and public fire departments and to include with that report any recommendations it may have for changes in the law. The reports required under this section shall be submitted in January of even numbered years.

L. 1995, c. 425, s. 7, eff. Jan. 10, 1996.

34:13A-16.5. Rules, regulations

The commission, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall promulgate rules and regulations to effectuate the purposes of this act.

L. 1995, c. 425, s. 8, eff. Jan. 10, 1996.

34:13A-16.6. Survey of private sector wage increases

Beginning on the July 1 next following the enactment of P.L.1995, c.425 (C.34:13A-14a et al.) and each July 1 thereafter, the New Jersey Public Employment Relations Commission shall perform, or cause to be performed, a survey of private sector wage increases for use by all interested parties in public sector wage negotiations. The survey shall include information on a Statewide and countywide basis. The survey shall be completed by September 1 next following enactment and by September 1 of each year thereafter. The survey shall be a public document and the commission shall make it available to all interested parties at a cost not exceeding the actual cost of producing the survey.

L. 1995, c. 425, s. 9, eff. Jan. 10, 1996.

34:13A-17. Powers of arbitrator

The arbitrator may administer oaths, require the attendance of witnesses, and the production of such books, papers, contracts, agreements and documents as he may deem material to a just determination of the issues in dispute, and for such purpose may issue subpoenas. If any person refuses to obey a subpoena, or refuses to be sworn or to testify, or if any witness, party or attorney is guilty of any contempt while in attendance at any hearing, the arbitrator may, or the Attorney General if requested shall, invoke the aid of the Superior Court within the county in which the hearing is being held, which court shall issue an appropriate order. Any failure to obey the order may be punished by the court as contempt.

L. 1977, c. 85, s. 4, eff. May 10, 1977.

34:13A-18. Limitations on finding, opinion, order of arbitrator

The arbitrator shall not issue any finding, opinion or order regarding the issue of whether or not a public employer shall remain as a participant in the New Jersey State Health Benefits Program or any governmental retirement system or pension fund, or statutory retirement or pension plan; nor, in the case of a participating public employer, shall the arbitrator issue any finding, opinion or order regarding any aspect of the rights, duties, obligations in or associated with the New Jersey State Health Benefits Program or any governmental retirement system or pension fund, or statutory retirement or pension plan; nor shall the arbitrator issue any finding, opinion or order reducing, eliminating or otherwise modifying retiree benefits which exist as a result of a negotiated agreement, ordinance or resolution because of the enactment of legislation providing such benefits for those who do not already receive them.

L. 1977, c. 85, s. 5, eff. May 10, 1977. Amended by L. 1997, c. 330, s. 4, eff. June 1, 1998.

34:13A-19. Decision; enforcement; venue; effective date of award; amendment or modification

The decision of the arbitrator may be enforced at the instance of either party in the Superior Court with venue laid in the county in which the dispute arose. The commencement of a new public employer fiscal year after the initiation of arbitration procedures under this act, but before the arbitration decision, or its enforcement, shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitrator or his decision. Increases in rates of compensation awarded by the arbitrator shall take effect on the date of implementation prescribed in the award. The parties, by stipulation, may at any time amend or modify an award of arbitration.

L. 1977, c. 85, s. 6, eff. May 10, 1977.

34:13A-21. Change in conditions during pendency of proceedings; prohibition without consent

During the pendency of proceedings before the arbitrator, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other, any change in or of the public employer or employee representative notwithstanding; but a party may so consent without prejudice to his rights or position under this supplementary act.

L. 1977, c. 85, s. 8, eff. May 10, 1977.

34:13A-22. Definitions

As used in this act:

"Commission" means the New Jersey Public Employment Relations Commission.

"Commissioner" means the Commissioner of Education.

"Discipline" includes all forms of discipline, except tenure charges filed pursuant to the provisions of subsubarticle 2 of subarticle B of Article 2 of chapter 6 of Subtitle 3 of Title 18A of the New Jersey Statutes, N.J.S. 18A:6-10 et seq., or the withholding of increments pursuant to N.J.S.18A:29-14.

"Employees" means employees of an employer as defined by this act.

"Employer" means any local or regional school district, educational services commission, jointure commission, county special services school district, or board or commission under the authority of the commissioner or the State Board of Education.

"Extracurricular activities" include those activities or assignments not specified as part of the teaching and duty assignments scheduled in the regular work day, work week, or work year.

"Minor discipline" includes, but is not limited to, various forms of fines and suspensions, but does not include tenure charges filed pursuant to the provisions of subsubarticle 2 of subarticle B of Article 2 of chapter 6 of Subtitle 3 of Title 18A of the New Jersey Statutes, N.J.S.18A:6-10 et seq., or the withholding of increments pursuant to N.J.S.18A:29-14, letters of reprimand, or suspensions with pay pursuant to section 1 of P.L. 1971, c. 435 (C. 18A:6-8.3) and N.J.S. 18A:25-6.

"Regular work day, work week, or work year" means that period of time that all members of the bargaining unit are required to be present and at work.

"Teaching staff member" means a member of the professional staff of any employer holding office, position or employment of such character that the qualifications, for the office, position or employment, require him to hold a valid and effective standard, provisional or emergency certificate, appropriate to that office, position or employment, issued by the State Board of Examiners. "Teaching staff member" includes a school nurse.

L. 1989, c. 269, s. 1, eff. Jan. 4, 1990.

34:13A-23. Assignment to extracurricular activities; subject to collective negotiations

All aspects of assignment to, retention in, dismissal from, and any terms and conditions of employment concerning extracurricular activities shall be deemed mandatory subjects for collective negotiations between an employer and the majority representative of the employees in a collective bargaining unit, except that the establishment of qualifications for such positions shall not constitute a mandatory subject for negotiations. If the negotiated selection procedures fail to produce a qualified candidate from within the district the employer may employ from outside the district any qualified person who holds an appropriate New Jersey teaching certificate. If the employer is unable to employ a qualified person from outside of the district, the employer may assign a qualified teaching staff member from within the district.

L. 1989, c. 269, s. 2, eff. Jan.. 4, 1990.

34:13A-24. Imposition of minor discipline

a. Notwithstanding any other law to the contrary, and if negotiated with the majority representative of the employees in the appropriate collective bargaining unit, an employer shall have the authority to impose minor discipline on employees. Nothing contained herein shall limit the authority of the employer to impose, in the absence of a negotiated agreement regarding minor discipline, any disciplinary sanction which is authorized and not prohibited by law.

b. The scope of such negotiations shall include a schedule setting forth the acts and omissions for which minor discipline may be imposed, and also the penalty to be imposed for any act or omission warranting imposition of minor discipline.

c. Fines and suspensions for minor discipline shall not constitute a reduction in compensation pursuant to the provisions of N.J.S.18A:6-10.

L. 1989, c. 269, s.3, eff. Jan. 4, 1990.

34:13A-25. Transfers of employees

Transfers of employees by employers between work sites shall not be mandatorily negotiable except that no employer shall transfer an employee for disciplinary reasons.

L. 1989, c. 269, s. 4, eff. Jan. 4, 1990.

34:13A-26. Withholding increment for disciplinary reasons

Disputes involving the withholding of an employee's increment by an employer for predominately disciplinary reasons shall be subject to the grievance procedures established pursuant to law and shall be subject to the provisions of section 8 of this act.

L. 1989, c. 269, s .5, eff. Jan. 4, 1990.

34:13A-27. Resolution of disputes

a. If there is a dispute as to whether a transfer of an employee between work sites or withholding of an increment of a teaching staff member is disciplinary, the commission shall determine whether the basis for the transfer or withholding is predominately disciplinary.

b. If the commission determines that the basis for a transfer is predominately disciplinary, the commission shall have the authority to take reasonable action to effectuate the purposes of this act.

c. If the commission determines that the basis for an increment withholding is predominately disciplinary, the dispute shall be resolved through the grievance procedures established pursuant to law and shall be subject to the provisions of section 8 of this act.

d. If a dispute involving the reason for the withholding of a teaching staff member's increment is submitted to the commission pursuant to subsection a. of this section, and the commission determines that the reason for the increment withholding relates predominately to the evaluation of a teaching staff member's teaching performance, the teaching staff member may file a petition of appeal pursuant to N.J.S.18A:6-9 and N.J.S.18A:29-14, and the petition shall be deemed to be timely if filed within 90 days of notice of the commission's decision, or of the final judicial decision in any appeal from the decision of the commission, whichever date is later.

L. 1989, c. 269, s. 6, eff. Jan. 4, 1990.

34:13A-28. Additional rights

Nothing in this act shall be deemed to restrict or limit any right established or provided by section 7 of P.L.1968, c.303 (C.34:13A-5.3); this act shall be construed as providing additional rights in addition to and supplementing the rights provided by that section.

L. 1989, c. 269, s. 7, eff. Jan. 4, 1990.

34:13A-29. Grievance procedures; binding arbitration

a. The grievance procedures that employers covered by this act are required to negotiate pursuant to section 7 of P.L.1968, c.303 (C.34:13A-5.3) shall be deemed to require binding arbitration as the terminal step with respect to disputes concerning imposition of reprimands and discipline as that term is defined in this act.

b. In any grievance procedure negotiated pursuant to this act, the burden of proof shall be on the employer covered by this act seeking to impose discipline as that term is defined in this act.

L. 1989, c. 269, s. 8, eff. Jan. 4, 1990.

34:13A-30. Employment with public employee labor organizations, certain; prohibited.

During the period in which an individual, pursuant to section 504 of Pub.L.86-257 (29 U.S.C.s.504), is prohibited from serving: as a consultant or adviser to any labor organization; as an officer, director, trustee, member of any executive board or similar governing body, business agent, manager, organizer, employee or representative in any capacity of any labor organization; as a labor relations consultant or adviser to a person engaged in an industry or activity affecting commerce, or as an officer, director, agent or employee of any group or association of employers dealing with any labor organization, or in a position having specific collective bargaining authority or direct responsibility in the area of labor-management relations in any corporation or association engaged in an industry or activity affecting commerce; in a position which permits the individual to receive a share of the proceeds from providing goods or services to any labor organization, or as an officer, executive or administrative employee of any entity, the activities of which are in whole or substantial part devoted to providing goods or services to any labor organization; or in any capacity involving decision-making authority over, or custody or control

of, the moneys, funds, assets or property of a labor organization, the individual shall also be prohibited from serving:

(a) As a consultant or adviser to any organization representing public employees;

(b) As an officer, director, trustee, member of any governing body, business agent, manager, organizer, employee or representative in any capacity of any organization representing public employees;

(c) As a labor relations consultant or adviser to any public employer, or as an officer, director, agent or employee of any group or association of public employers, or in a position in which the individual has collective bargaining authority or responsibility in the area of labor-management relations for a public employer;

(d) In a position which permits the individual to receive a share of the proceeds from providing goods or services to any organization representing public employees, or as an officer, executive or administrative employee of any entity the activities of which are in whole or substantial part devoted to providing goods or services to any organization representing public employees; or

(e) In any capacity involving decision-making authority over, or custody or control of, the moneys, funds, assets or property of an organization representing public employees.

For the purposes of this section, "labor organization" means a labor organization as defined in section 3 of Pub.L.86-257 (29 U.S.C. s.402).

L. 1999, c. 3, s. 1, eff. Jan. 21, 1999.

34:13A-31. Short title.

This act shall be known and may be cited as the "School Employees Contract Resolution and Equity Act."

L. 2003, c. 126, s. 1, eff. July 10, 2003.

34:13A-32. Definitions relative to school employee collective negotiations.

For the purposes of this act:

"Employer" or "public employer" means any local or regional school district, charter school and its board of trustees, vocational school district, educational services commission, jointure commission, county special services school district, community college, county college, or board or commission under the authority of the Commissioner of Education, the State Board of Education, or the New Jersey Commission on Higher Education.

"Majority representative" means the majority representative of the employees in a collective bargaining unit which is recognized or certified as the majority representative as the result of recognition or certification procedures under the "New Jersey Employer-Employee Relations Act," P.L.1941, c.100 (C.34:13A-1 et seq.), or is voluntarily recognized by the employer.

"Commission" means the New Jersey Public Employment Relations Commission.

L. 2003, c. 126, s. 2, eff. July 10, 2003.

34:13A-33. Terms, conditions of employment under expired agreements.

Notwithstanding the expiration of a collective negotiations agreement, an impasse in negotiations, an exhaustion of the commission's impasse procedures, or the utilization or completion of the procedures required by this act, and notwithstanding any law or regulation to the contrary, no public employer, its representatives, or its agents shall unilaterally impose, modify, amend, delete or alter any terms and conditions of employment as set forth in the expired or expiring collective negotiations agreement, or unilaterally impose, modify, amend, delete, or alter any other negotiable terms and conditions of employment, without specific agreement of the majority representative.

L. 2003, c. 126, s. 3, eff. July 10, 2003.

34:13A-34. Participation in mandatory fact finding; report; appointment of super conciliator.

a. In any case in which collective negotiations between an employer and a majority representative have failed to result in the parties reaching agreement on the terms of a negotiated agreement and the commission's mediation procedures have been exhausted with no final agreement having been reached, the parties shall be required to participate in mandatory fact finding, which shall be conducted by a fact finder under the jurisdiction of the commission, subject to procedures established by the commission pursuant to regulation. The fact finder shall be appointed no later than 30 days after the last meeting between the parties and the mediator in connection with the mediation pursuant to this act.

b. Following completion of such fact finding, the fact finder's report shall be made available to the parties immediately after its issuance, and to the public 10 days thereafter.

c. If the employer and the majority representative do not reach a voluntary negotiated agreement within 20 days after the issuance of the fact finder's report, the commission shall appoint a super conciliator to assist the parties, based upon procedures and subject to qualifications established by the commission pursuant to regulation.

L. 2003, c. 126, s. 4, eff. July 10, 2003.

34:13A-35. Investigatory proceedings.

The super conciliator shall promptly schedule investigatory proceedings. The purpose of the proceedings shall be to:

- a. Investigate and acquire all relevant information regarding the dispute between the parties;
- b. Discuss with the parties their differences, and utilize means and mechanisms, including but not limited to requiring 24-hour per day negotiations, until a voluntary settlement is reached, and provide recommendations to resolve the parties' differences;
- c. Modify or amend the fact finder's report for reconsideration by the parties in a further effort to achieve a voluntary settlement by the parties; and
- d. Institute any other non-binding procedures deemed appropriate by the super conciliator.

L. 2003, c. 126, s. 5, eff. July 10, 2003.

34:13A-36. Final report.

If the actions taken by the super conciliator fail to resolve the dispute, the super conciliator shall issue a final report, which shall be provided to the parties promptly and made available to the public within 10 days thereafter.

L. 2003, c. 126, s. 6, eff. July 10, 2003.

34:13A-37. Confidentiality; exceptions.

The mediator, fact finder, or super conciliator, while functioning in a mediatory capacity, shall not be required to disclose any files, records, reports, documents, or other papers classified as confidential which are received or prepared by him or to testify with regard to mediation conducted by him under this act. Nothing contained herein shall exempt an individual from disclosing information relating to the commission of a crime.

L. 2003, c. 126, s. 7, eff. July 10, 2003.

34:13A-38. Report to Governor, Legislature.

Five years after the effective date of this act, the commission shall submit a report to the Governor and to the Legislature on the effects of this act on the negotiations and settlement between school employees and their employers with any recommendations it may have for any changes in the law.

L. 2003, c. 126, s. 8, eff. July 10, 2003.

34:13A-39. Rules, regulations.

The commission, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) shall promulgate rules and regulations to effectuate the purposes of this act.

L. 2003, c. 126, s. 9, eff. July 10, 2003.